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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/448,617	11/23/1999	DALE E. OLSEN	1416-FBI	5242

7590

04/12/2006

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EXAMINER

MOSSER, KATHLEEN MICHELE

ART UNIT	PAPER NUMBER
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3715

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/448,617	Applicant(s) OLSEN, DALE E.	
	Examiner Kathleen Mosser	Art Unit 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 7, 8, 14, 22, 28, 29, 35, 43, 49, 50, 52 and 60-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 8, 14, 22, 28, 29, 35, 43, 49, 50, 52, and 60-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In response to the request for continued examination filed 02/17/2006, claims 2-6, 9-13, 15-21, 23027, 30-34, 36-42, 44-48, 51 and 53-59 have been cancelled; claims 1, 7-8, 14, 22, 28-29, 35, 43, 49-50, 52, 60-65 and newly added claim 66 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/17/2006 has been entered.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 14, 35, 60, 61, 63 and 65 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Each of the claims is directed to a method or computer readable medium for causing a computer to perform a method. In order for the method to be statutory it must have a practical application. A practical application may be shown as either a) a physical transformation or b) otherwise producing a useful, concrete and tangible result. In order to show a physical transformation the method must transform an article or physical object to a different state or thing. Although, this would seemingly be the case with the method which recites a plurality of "creating" steps, the components created are digital representations or potentially all computer generated data. Computer data and data signals do not constitute physical objects. Further, the method fails to produce a

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tangible result. In order for a result to be tangible it must possess a real-world value and be appreciable to something outside the system that produced it. In the instant invention each of the methods results in the creation of some sort of digital data. This digital data is never represented outside the machine it is created in or conveyed to user. Absent any such features the claim is merely drawn to a manipulation of an abstract idea and is thus directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 7-8, 14, 22, 28-29, 35, 43, 49-50, 52, 60-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the independent claims has been amended to include the phrase "reasonable and consistent". These phrases represent a relative term which renders the claim indefinite. The specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What is considered "reasonable" varies from one person to another and is indefinite as such. The specification includes clear instructions as to how to make the selected phrases be "consistent" with the previous responses. The examiner suggests amending the claims to recite only this term. Each of the dependent claims incorporates this phrase through its dependencies and as such are rejected for the same reasons.

In addition, claims 14, 22, 35, 43, 60-65 include the limitation of an emotional component having an emotional model which determines the direction and magnitude of change between a plurality of emotional states of the simulated person to the statements selected by the user thereby "affecting the random selection from said list". The claim does not define how the tracking of the changes affects the random selection and draws no correlations between the two features. It is unclear how the emotional component effects the selections.

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Lastly claim 66 recites the phrase "said simulated person's emotional state" there insufficient antecedent basis for this phrase in the claim.

Response to Arguments

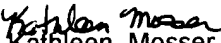
4. Applicant's arguments, see the response, filed 02/17/06, with respect to the claims as amended have been fully considered and are persuasive. The previous rejections of the claims have been withdrawn. In view of the newly added feature regarding how each of the responses is selected, including the use of probabilities and a random number generator, the prior art of record has been overcome.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kathleen Mosser
Primary Examiner
Art Unit 3715

April 10, 2006